

**REMARKS**

With the addition of new claims 77 and 78, claims 46-61 and 70-78 are currently pending. In view of the foregoing amendments and remarks urged here, Applicant respectfully requests that the Examiner reconsider the patentability of the claimed subject matter in view of the following discussion.

**Claim Rejections – 35 U.S.C. § 103**

The Examiner has rejected claims 46-61 and 70-76 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0065732 to Rodgers et al. ('Rodgers') in view of U.S. Patent Application Publication No. 2002/0069263 to Sears et al. ('Sears').

In the Response to Arguments section of the Office Action (in response to the response submitted with the Request for Continued Examination), the Examiner asserts that the *Sears* reference discloses summary information including promotional information associated with said demarked file and rating information associated with said demarked file provided by said first user (as recited in independent claims 46, 55 and 70). The Examiner argues that this teaching of the *Sears* reference can be combined with the teachings of *Rodgers* regarding the transferring of files between consumers to render the claimed subject matter obvious. Applicants respectfully traverse these assertions.

The *Sears* reference concerns a central repository structure in which a central server provides information regarding applications that are available for downloading. See e.g., *Sears*, paragraph 42. As noted in the *Sears* reference, any 'rating' or ranking information derived from end users is stored in databases accessible through the repository server. See *Sears*, paragraph 36; Figure 1. There is no teaching or suggestion that any rating or ranking information is stored or present in end user devices as claimed.

Thus, what the Examiner proposes, combining a reference that teaches the storing of application ratings and/or rankings in a database coupled to a central repository server with another reference that teaches sending files (with metadata) from one consumer device to another, is to combine inconsistent teachings that those of skill in the art would not be motivated to consult together in the present context. To make this point more plain, *Rodgers* does not

disclose or suggest that an end user device would store rating or ranking metadata related to files it is able to provide to other end users. The *Sears* reference does not cure this particular deficiency of the *Rodgers* reference in that it also does not disclose or suggest that an end user device would have this information. Rather, the sending or receiving end user device would need to consult the central repository server in order to obtain any such information. However, this does not meet the subject matter of claims 46, 55 and 70 which each recite that the rating information is provided by a first user. Thus, the claimed invention provides rating information in the metadata that may be readily transferred from one end user device to another in a distributed architecture. This would not be possible if this information were stored according to the centralized server model according to *Sears*.

For at least these reasons, it is submitted that the combination of *Rodgers* and *Sears* does not disclose or suggest the claimed subject matter and further, that their teachings are mutually incompatible in this regard; those of skill in the art would not be motivated to combine the teachings of *Sears* and *Rodgers* so as to arrive at the claimed subject matter because the central repository model of *Sears* and the distributed of *Rodgers* are incompatible in this regard. Rating information accessible centrally through a repository server per *Sears* is not necessarily on hand at an end user device for immediate transfer.

Accordingly, as the combined references do not disclose or suggest all of the features of claims 46-61 and 70-76, withdrawal of the obviousness rejection of these claims is respectfully requested.

### New Claims

New independent claim 77 recites the features of automatically transferring, from the first computer system to the second handheld computer system, metadata information with respect to the demarcated files without the content of the demarcated files when the first computer system enters into communication with a second computer system. It is submitted that this feature is not taught or suggested by the references relied upon, and that claim 77 and its dependent claim 78 are therefore patentable.

***Conclusion***

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections. The Examiner is invited to telephone the undersigned representative if an interview might expedite allowance of this application.

Respectfully submitted,

BERRY & ASSOCIATES P.C.

Dated: March 15, 2008

By: \_\_\_\_\_/Howard Grossman/

Howard Grossman

Registration No. 48,673

Phone: 212-871-6266

**Correspondence Address**

**Cust. No. 49637**

Berry & Associates, P.C.  
9255 Sunset Boulevard, Suite 810  
Los Angeles, CA 90069  
Phone: (310) 247-2860  
Fax: (310) 247-2864